

State of Washington
Joint Legislative Audit and Review Committee (JLARC)



Wildlife Damage Claims on Rangeland Sunset Review

Preliminary Report

January 7, 2004

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in alternative formats for persons with disabilities.*

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The Joint Legislative Audit and Review Committee (JLARC) carries out oversight, review, and evaluation of state-funded programs and activities on behalf of the Legislature and the citizens of Washington State. This joint, bipartisan committee consists of eight senators and eight representatives, equally divided between the two major political parties. Its statutory authority is established in RCW 44.28.

JLARC staff, under the direction of the Committee and the Legislative Auditor, conduct performance audits, program evaluations, sunset reviews, and other policy and fiscal studies. These studies assess the efficiency and effectiveness of agency operations, impacts and outcomes of state programs, and levels of compliance with legislative direction and intent. The Committee makes recommendations to improve state government performance and to correct problems it identifies. The Committee also follows up on these recommendations to determine how they have been implemented. JLARC has, in recent years, received national recognition for a number of its major studies.

**WILDLIFE DAMAGE
CLAIMS
ON RANGELAND
SUNSET REVIEW**

PRELIMINARY REPORT



**REPORT DIGEST
JANUARY 7, 2004**

STATE OF WASHINGTON
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REVIEW COMMITTEE

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In 2001, the Legislature expanded a long-established program of public compensation for wildlife damage to private agricultural crops. Under the expanded program, citizens can make claims for damage to include not only field crops and orchards, but also “rangeland forage on privately-owned land used for grazing or browsing of domestic livestock.” The rangeland provision is set to expire June 30, 2004. The Joint Legislative Audit and Review Committee (JLARC) was directed to conduct a review of the expanded program by January 2004 using the sunset review criteria. This report constitutes completion of that assignment.

The Wildlife Damage Compensation Program

Up to \$150,000 per year is available to the Department of Fish and Wildlife (WDFW) to assess and pay small damage claims. Claims for more than \$10,000 go to the state Office of Risk Management and are decided and authorized by the Legislature as sundry claims.

Prior to the 2001 legislation, in the absence of specificity in the statute, the Department paid for or replaced damaged bailed hay or hay in the field that would have been cut. Cultivated, fertilized, or irrigated pasture grass that is “harvested” by turning cattle out to feed was a grey area where, by region and over time, there were differing interpretations regarding eligibility for compensation. **Natural rangeland was definitely excluded from this damage claims program.**

Over the past five years, the number and value of wildlife damage claims and payments has varied substantially, based on weather and other conditions that impact the movement of big game onto private agricultural land. An average of 50 claims per year have been submitted totaling just under half a million dollars annually. About 70 percent of claimants have received some compensation, either direct payment of all or a portion of the amount claimed or free hunting permits. The annual amount paid for damage claims between fiscal years 1999 and 2003, including sundry claims has averaged \$129,000.

The state employs several methods in addition to compensation to ameliorate the negative effects of wildlife on agriculture: special hunts, assistance with efforts to discourage wildlife from grazing (i.e., fences and hazing techniques), relocation, and enhancement of habitat on public land to make it more attractive to wildlife. Based on a 1994-1995 survey of states, Washington is one of 19 states that offer some sort of wildlife damage compensation and one of 34 that offers abatement assistance such as help with hazing and fencing.

Expansion of the Wildlife Damage Compensation Program to Rangeland

In 2001, SHB 1752 expanded the program to compensate for deer and elk damage by amending RCW 77.36, the authorizing law. It widened the definition of “crop” eligible for damage compensation to include

“rangeland forage on privately-owned land used for grazing or browsing of domestic livestock for at least part of the year for commercial purposes.”

Compensation for rangeland damage was limited to \$50,000 per year, one-third of the total amount available for crop compensation. The legislation also directed that half of any compensation funds unspent at the end of the fiscal year be used “as matching grants to enhance habitat for deer and elk on public lands.” Finally, the 2004 expiration date was set and the review assigned.

Since the expansion to rangeland became effective in July 2001, only six claims from three individuals regarding damage to natural rangeland have been filed with WDFW, and none of these claims have been paid. However, the program does appear to have had an impact on claims for damage to cultivated livestock forage. The Department has received and paid more such claims in the years since the legislation than in those immediately preceding it.

Evaluating damage to animal forage, particularly forage on natural rangeland, is significantly more complex than evaluating damage to crops sold commercially. Of the few states that compensate for damage to livestock forage, one does not pay for damage to natural rangeland, two pay only in extraordinary circumstances, and one pays but imposes a \$1000 deductible.

Evaluation

The WDFW appears to be implementing the expanded program as intended by the Legislature. The one exception is failure to designate half of unspent compensation funds each year for habitat expansion, due primarily to a technical flaw in the statute. The cost in staff time of carrying out a rangeland compensation program in accord with the statute appears to be high, because in the few cases considered, WDFW staff have found it complex and difficult to reach reasonable estimates of damage to natural rangeland.

Recommendations

1. The Legislature should let the natural rangeland damage compensation program expire on June 30, 2004.

From the limited data available at the time of this review, just two and a half years after the effective date of the legislation, there appears to be no compelling reason to continue this program. The program to compensate for natural rangeland damage has had minimal use: six claims from three individuals. Assessing damage to natural rangeland appears to be difficult, inexact, and costly in staff time. Assistance with abatement efforts, fencing, special hunts, emergency kill authority, and enhancement of wildlife habitat on adjacent public land are more cost-effective methods of minimizing the impact of deer and elk on privately-owned natural rangeland.

2. The Legislature should direct the Department to convene a task force to draft proposed regulations to apply the general crop damage compensation program to hayfields and cultivated pasture grass.

More claims deal with this sort of damage, and it is more feasible to address. Negotiated rules (Washington Administrative Code) rather than statute may best provide for the flexibility and expertise needed to ensure that this policy both can be implemented efficiently by the Department and meets the needs of agriculture.

3. If the Legislature wishes to continue to direct a portion of unspent crop damage compensation funds to matching grants for habitat enhancement on public land after June 30, 2004, the Legislature should create a workable funding mechanism in statute.

TABLE OF CONTENTS

SECTION I – INTRODUCTION	1
SECTION II – WASHINGTON STATE’S WILDLIFE DAMAGE CLAIMS PROGRAM ...	1
STATUTORY PROVISIONS	1
OTHER STRATEGIES FOR MITIGATING WILDLIFE DAMAGE	5
SECTION III – EXTENDING THE WILDLIFE DAMAGE CLAIMS PROGRAM TO RANGELAND: SHB 1752.....	5
PROVISIONS OF SHB 1752	5
SECTION IV – EVALUATION AGAINST SUNSET REVIEW CRITERIA AND RECOMMENDATIONS.....	10
EVALUATION	10
RECOMMENDATIONS.....	11
AGENCY RESPONSES	12
ACKNOWLEDGEMENTS	12
APPENDIX 1 – SHB 1752	13
APPENDIX 2 – AGENCY RESPONSES	19
APPENDIX 3 – DAMAGE CLAIM PROCESS AND METHODOLOGY	21
GENERAL DAMAGE CLAIM EVALUATION PROCESS.....	21
VARIATION FOR NATURAL RANGELAND DAMAGE CLAIMS	21
APPENDIX 4 – EXPERIENCES OF FOUR OTHER STATES THAT COMPENSATE FOR DAMAGE TO STANDING HAY AND PASTURE GRASS	25

SECTION I – INTRODUCTION

Since the 1940s, Washington State has provided an opportunity for farmers and orchardists to be reimbursed for deer and elk damage to commercial agricultural crops. Washington is one of 19 states that compensate for some type of wildlife damage.

In 2001, the Legislature expanded the compensation program to cover not only field crops and trees, but also “rangeland forage on privately-owned land used for grazing or browsing of domestic livestock.” The Legislature set this expansion of the program to expire on June 30, 2004 and assigned to the Joint Legislative Audit and Review Committee (JLARC) the task of evaluating the inclusion of rangeland according to the statutory criteria of a sunset review established in Chapter 43.131 RCW. This report constitutes JLARC’s completion of that assignment.

The policy question the Legislature faces is whether to continue to offer the possibility of compensation for deer and elk damage to citizens who own or lease private natural rangeland. Absent action by the Legislature, this option will expire June 30, 2004.

We provide the following information to assist the Legislature in deciding the merits of either allowing the opportunity to claim for wildlife damage to natural rangeland to end or renewing it.

- Section II of this report briefly describes the state’s wildlife damage claims program.
- Section III outlines the provisions and intent of the 2001 legislation expanding the program to include natural rangeland damage, implementation of the expansion by the Washington State Department of Fish and Wildlife (WDFW). It also briefly describes wildlife damage policies in other states.
- Section IV reviews the expansion to include natural rangeland in the damage claims program according to the statutory sunset criteria, and offers JLARC’s recommendations.

SECTION II – WASHINGTON STATE’S WILDLIFE DAMAGE CLAIMS PROGRAM

Statutory Provisions

RCW 77.36 governs compensation for wildlife damage to crops. The main statutory provisions regarding the operation of this program are as follows:

- Claims may be paid only for the value of the crop that is damaged. Neither damage to other real or personal property or animals, nor lost time or profits can be compensated.
- The crop must be grown for commercial purposes.
- The damage must have occurred on privately-owned land. The damage can be paid either to the landowner or a tenant – whoever owns the crop.
- Compensation is available for damage caused by deer or elk only – not any other species of animal or bird.
- Claims may be paid whether the crop is harvested or still growing.
- The claimant must contact the Department within ten days after discovering the damage. If the crop will be harvested, or some other alteration made that will make damage assessment difficult, the claimant must contact the Department as soon as possible after discovery.

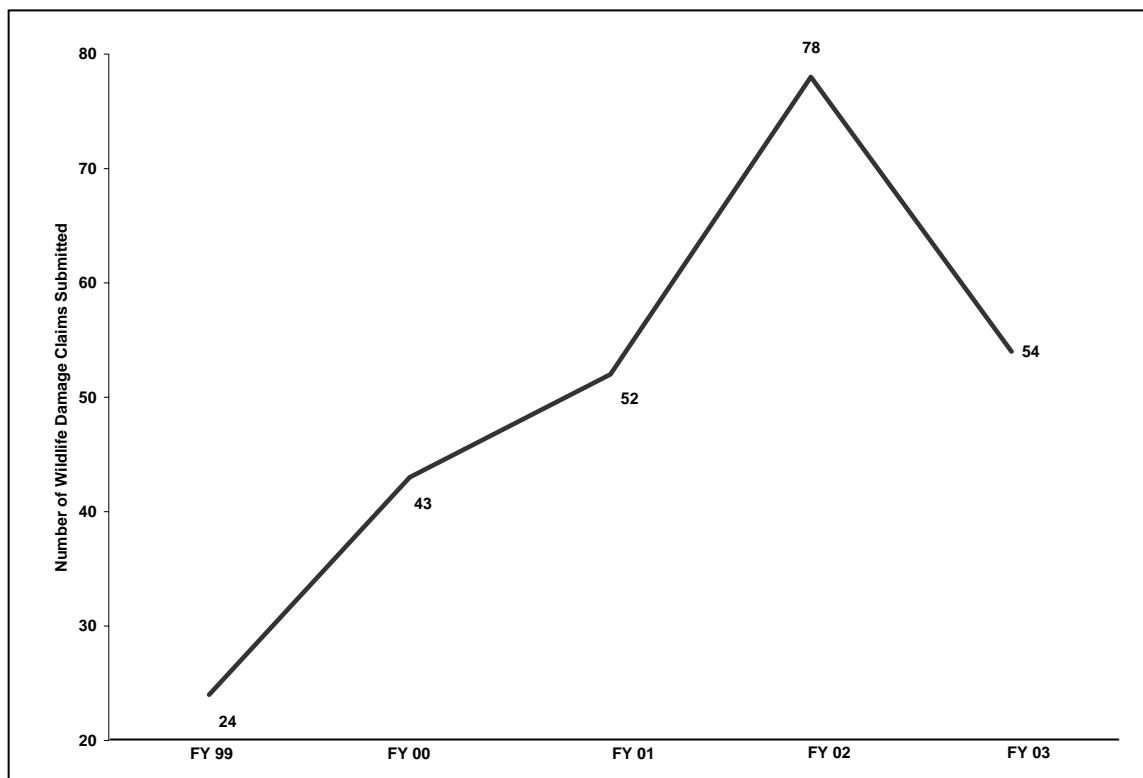
- A written claim must be submitted within 60 days after damage occurred.
- The Department may examine and assess damage. The claimant has the burden of proving that damage occurred.
- The Department and claimant may agree on a knowledgeable neutral party to assess damages, sharing equally the cost of procuring such expertise.
- The claimant must abide by any wildlife damage prevention agreement with the Department and use any abatement resources or practices provided.
- Claims are paid only for damage that is not covered by insurance.
- The Department may decline to pay a claim if the property was not open to public hunting.
- Once WDFW offers payment on a claim, the claimant has 60 days to accept payment or the offer is deemed rejected.

Use of the Wildlife Damage Compensation Program

The total number of crop damage claims has generally increased over the last five years, with a spike in FY 2002 as a result of fire on the Hanford Reservation that drove wildlife onto adjacent private land. (See Figure 1).

The dollar value of wildlife damage claims has varied substantially from year to year over the last five years. Not all claims are found to be valid, and among those accepted as valid the Department may assess the damage as less than the amount claimed. On average over the last five years, just under 70

Figure 1 – Total Number of Wildlife Damage Claims Submitted to WDFW, Fiscal Year 1999 through Fiscal Year 2003



Source: WDFW data; JLARC analysis.

percent of claimants have received some sort of compensation – either financial reimbursement for damages, or free hunting permits, for their own use or for sale to others, in lieu of direct financial compensation.

The bulk of claims are for damage to field crops such as wheat and peas or to orchards. However, even prior to the 2001 expansion, the Department paid a number of claims for crops used as forage for cattle: hay and cultivated pasture grass. (See Figure 2).

The Department has noted that in the absence of specificity in the statute the agency generally paid for or replaced damaged bailed hay or hay in the field that had been sold in prior years. Cultivated or irrigated pasture grass that is “harvested” by turning cattle out to feed was a grey area where, by region and over time, there may have been differing interpretations regarding eligibility for compensation. Natural rangeland was definitely excluded.

Working definitions:

Hay: Cultivated grass that is or will be cut and bailed for use as animal feed.

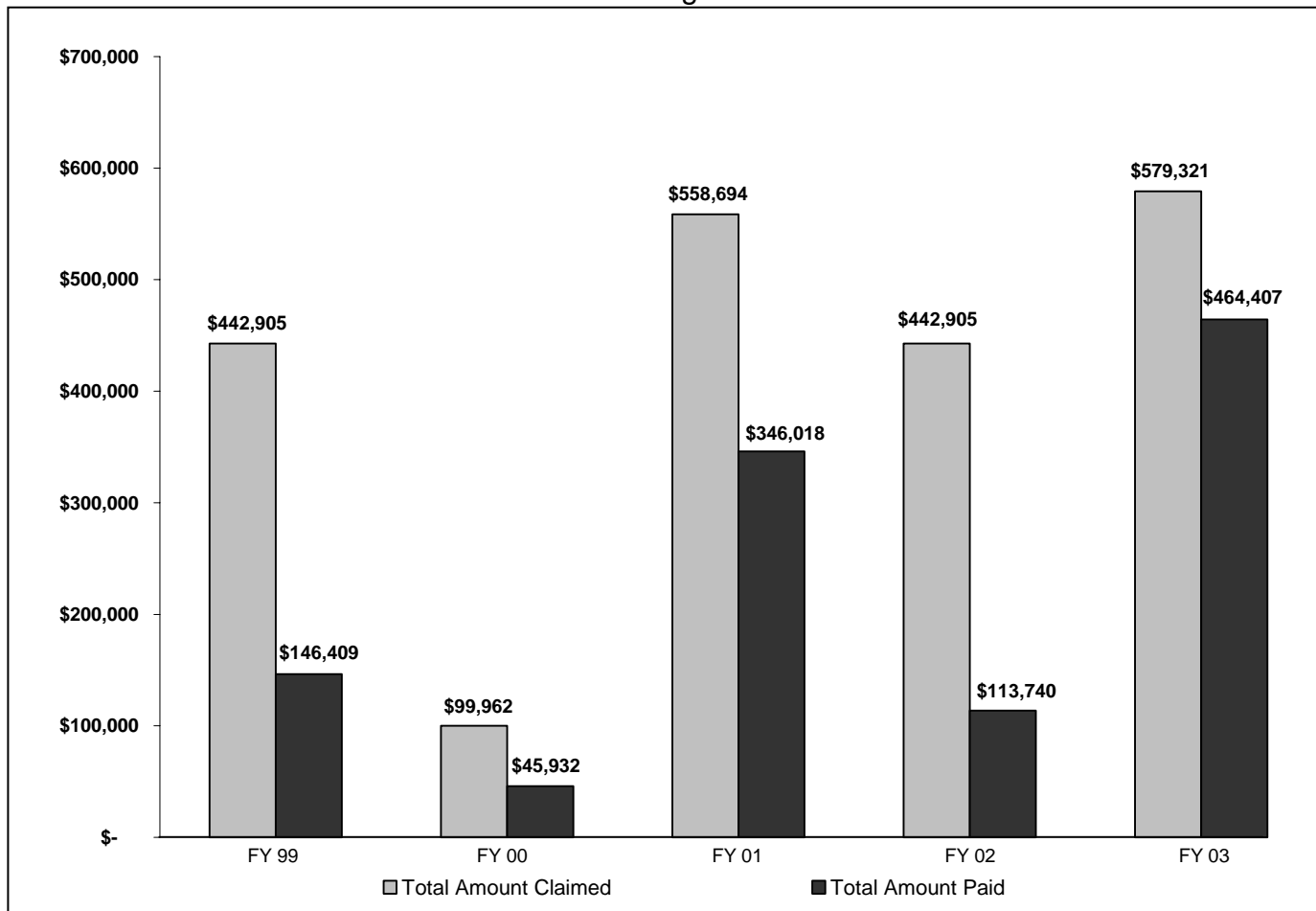
Pasture Grass: Artificially seeded, cultivated, fertilized and/or irrigated grass onto which livestock are turned to graze. This may include re-growth from cut hayfields.

Natural Rangeland: Uncultivated land that naturally contains some grasses and other plants suitable for livestock forage.

Funding

- RCW 77.36 provides that WDFW may spend no more than \$120,000 from the state Wildlife Fund and \$30,000 from the state General Fund to assess and pay damage claims in any fiscal year. The

Figure 2 – Total \$ Amount of Wildlife Damage Claimed and Total \$ Amount Paid,
Fiscal Year 1999 through Fiscal Year 2003



Source: WDFW data; JLARC analysis.

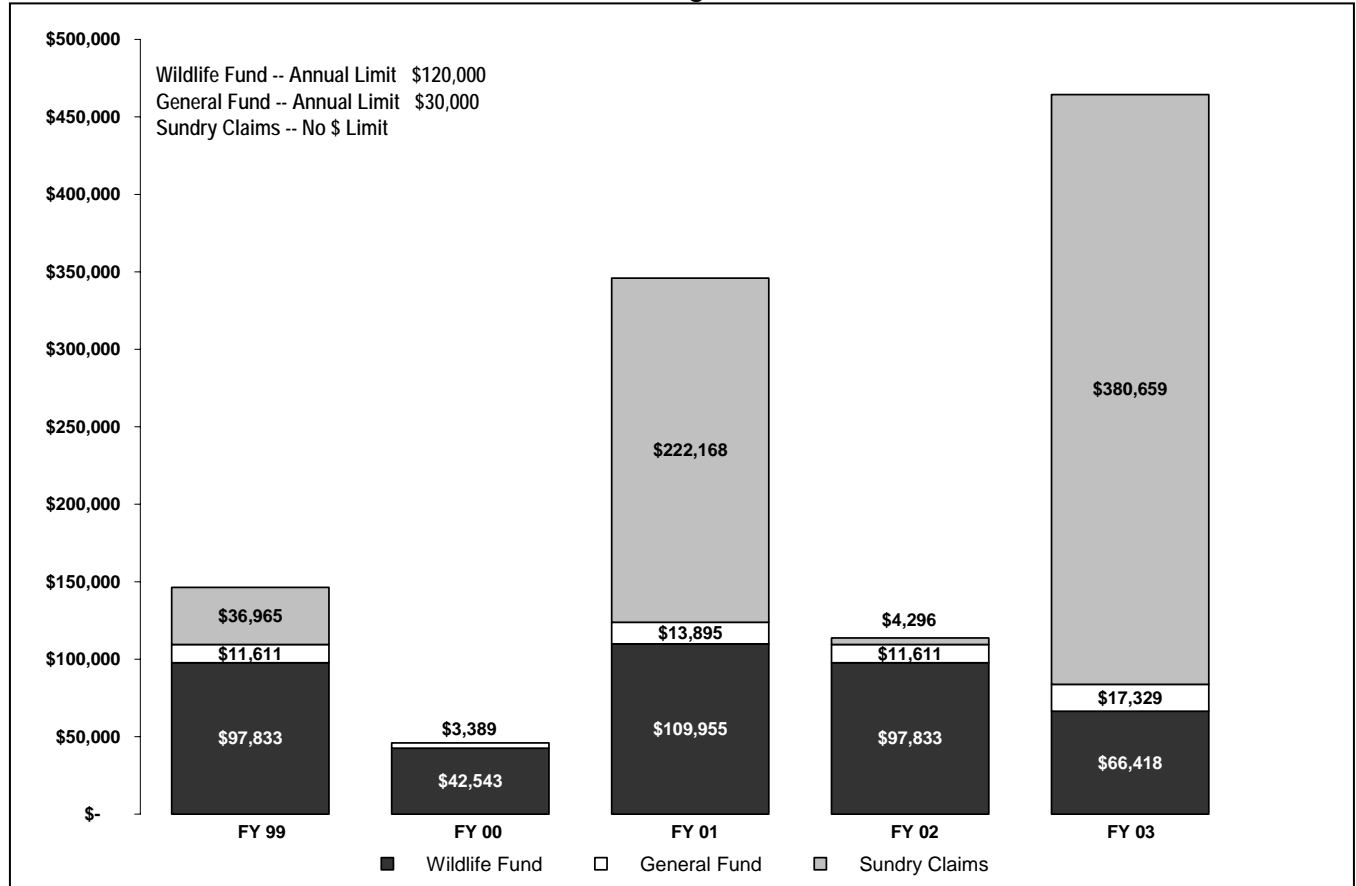
Wildlife Damage Claims on Rangeland Sunset Review Report

Legislature may increase these caps by declaring an emergency.

- The General Fund is used for damage claims in areas where local laws prohibit hunting, while the Wildlife Fund is the source of payment on claims arising in areas where hunting is allowed.
- If funding is limited, claims are prioritized in the order they are received.
- The Department may pay claims up to \$10,000. Claims for higher amounts and appeals of any Department decision may be filed with the Office of Risk Management, with determinations made by the Legislature through sundry claims appropriations. Sundry claims for damage are not included in the \$150,000 limit. **However, payments through the sundry claims process exceeded \$200,000 in FY 2001 and again in FY 2003.** (See Figure 3).¹

Tom- bold?

Figure 3 – Fund Sources Used to Pay Wildlife Damage Claims
Fiscal Year 1999 through Fiscal Year 2003



Source: WDFW data; JLARC analysis.

¹ The annual limit for the Wildlife Fund is \$120,000 and \$30,000 for the General Fund. These two are determined by WDFW while the sundry claims amount is unlimited and determined by the Legislature.

Other Strategies for Mitigating Wildlife Damage

The state employs several methods in addition to compensation to ameliorate the negative effects of wildlife on agriculture including special hunts, hazing,² fencing, relocation and enhancement of habitat on public land to make it more attractive to wildlife.

The WDFW authorizes a variety of special hunts to eliminate problem or dangerous wildlife, including a new type of special hunt established by the Legislature in 2003. In the first ten months of 2003, WDFW issued 156 special hunt permits to kill 180 deer and 108 elk because of damage issues. In addition, on privately-owned ranchland open to public hunting, the owner or renter may declare an emergency if WDFW has not responded within 48 hours to contact regarding wildlife damage that could not have been predicted. In such a self-designated emergency the landowner may kill any offending deer or elk.

WDFW also assists landowners to employ hazing techniques to discourage wildlife from remaining on their agricultural property and occasionally relocates damage-causing animals. In addition, the Legislature currently provides \$150,000 per biennium to the Department to assist landowners with fencing to keep wildlife off their agricultural lands. Finally, within general land management funding, WDFW works to maintain wildlife habitat on state wildlife lands, particularly in areas adjacent to private agricultural lands. Habitat enhancement may or may not occur depending on budget and management priorities of the particular federal or state agency that owns a plot of land.

SECTION III – EXTENDING THE WILDLIFE DAMAGE CLAIMS PROGRAM TO RANGELAND: SHB 1752

In the years immediately preceding 2001, several factors may have helped bring about interest in extending the option to claim for damage to privately-owned rangeland:

- Change in public policy to allow less use of public land for livestock grazing because of conservation efforts and concern about damage due to grazing.
- A perception that the size of elk herds in the state was increasing and that these changes were due to WDFW management policy.
- Fires on the Hanford Reservation that drove elk onto adjacent private agricultural land, including pasture land.
- Seasonal presence of Yakima area elk on private land.

Provisions of SHB 1752

In 2001, SHB 1752 expanded the program to compensate for deer and elk damage to include “rangeland forage,” by amending portions of RCW 77.36, the statute that authorizes the program.

The Legislature recognized the importance of rangeland suitable for livestock grazing. It also broadened the definition of “crop” eligible for damage compensation to include “rangeland forage on privately-owned land used for grazing or browsing of domestic livestock for at least part of the year for commercial purposes.”

Compensation for rangeland damage was limited to one-third of the total amount available for crop compensation. So, no more than \$40,000 of the \$120,000 available each year from the state Wildlife

² In this context “hazing” means efforts to get wildlife to leave an area where they are causing a problem. Techniques include propane cannons and other devices that emit loud noises.

Fund could be used for rangeland compensation. Likewise, no more than \$10,000 of the \$30,000 from the state General Fund could be used for this purpose annually.

The Legislation also directed that half of any portions of the \$120,000 and \$30,000 unspent at the end of the fiscal year be used “as matching grants to enhance habitat for deer and elk on public lands.”

Finally, the above provisions were set to expire on June 30, 2004 and the Joint Legislative Audit and Review Committee was directed to complete a sunset review of the rangeland damage compensation program by January 1, 2004. The complete text of SHB 1752 is included in this report as Appendix 1.

Legislative Intent

The language of the bill and testimony from the sponsor and others suggests several aims for this statute:

Primary Goal: To Give an Opportunity to Claim for Damage to Livestock Forage. The main goal of SHB 1752 was clearly to treat damage to rangeland forage, which feeds dairy cows and cattle sold commercially, the same as damage to other crops sold commercially. One legislative proponent stated that the goal was equity for ranchers. Another noted that ranchers in 2001 were held to higher standards for responsible range management practices than was the case in years past. As part of conservation efforts, a carrying capacity (known as Animal Unit Months, or AUMs) is established for grazing land, both public and private. When some of the AUMs are consumed by deer or elk, less may be available for livestock. Testimony indicates that the bill was seen as applying not only to natural rangeland but also to pasture grass, that is grass grown lands that are artificially seeded and cultivated and may be irrigated and fenced but where the ‘method of harvesting’ is turning cattle out to graze.

Secondary Goal: Reduce Future Damage to Agriculture by Enhancing Habitat on Public Land. The Legislature also intended to reduce future damage to commercial agriculture by enhancing deer and elk habitat on public land. It was noted in testimony that wildlife may be attracted onto private land if it offers better habitat (forage, water sources and cover) than adjacent public land. Opponents expressed concern that rangeland claims might exhaust the funds available for all crop damage compensation. Directing a portion of unspent compensation funds to matching grants for habitat enhancement on public lands was seen as a way to limit crop damage claims in general.

Implementation 2001-2003

The impact of SHB 1752 includes not only changing WDFW policy and practice regarding claims for damage to livestock forage on natural rangeland, but also in cultivated pastures and hayfields:

Natural Rangeland Damage Claims. *In the two full years the new policy has been in place, a total of only **four** natural rangeland damage claims have been filed.*³ The Department was contacted regarding one additional rangeland damage concern, for which no claim form was received. The individual amounts claimed ranged from \$1200 to \$8289, with all four claims totaling \$18,304. *No claims for damage to natural rangeland have been paid since the bill went into effect.* The reasons

³ Information about the volume of claims must be considered with caution: As described above, the number and dollar value of claims for wildlife damage varies dramatically by year, depending on weather, wildfire, rainfall and other factors. The program to offer compensation for damage to rangeland has been in place for only two and a half years. The experience of the first two full years may not be predictive of the volume of future rangeland claims if the Legislature chooses to continue this program. Also, in some situations where WDFW was contacted regarding a potential claim, but no completed claim form was ever received, the Department does not have a record of the crop on which damage was alleged.

cited by the Department for why each of the four natural rangeland damage claims submitted were not

Location of Damage Claim	Reason Cited by the Department for No Compensation
Asotin County	WDFW completed a previously-planned purchase of land from the claimant, and as part of the purchase agreement the claim was dropped.
Whitman County*	WDFW assessed use but no damage by wildlife; that is, that the amount of forage consumed by deer was not sufficient to require that the claimant reduce the number of cattle he was grazing on the rangeland property.
Whitman County*	The claim was not filed within the required 60 days after discovery of damage or 60 days after harvest – the claim was submitted in January 2002 for damage that occurred the prior summer. (This claim also included damage to garbanzo beans and peas. The landowner did receive a landowner access permit, but apparently it was not for rangeland damage).
Yakima County**	The claim was not filed within the required 60 days after discovery of damage. The damage occurred March through July 2001. The claim was submitted December 28, 2001. The Department also noted in a letter to the claimant that the bulk of the damage occurred prior to the date the rangeland extension went into effect.

*The two claims from Whitman County are from the same individual.

**During FY 2002, the Yakima claimant also contacted the Department regarding additional natural rangeland damage, but apparently did not submit a completed claim form. On September 17, 2003 this individual submitted an additional claim, which is pending before the WDFW.

paid are shown in the table on the following page.

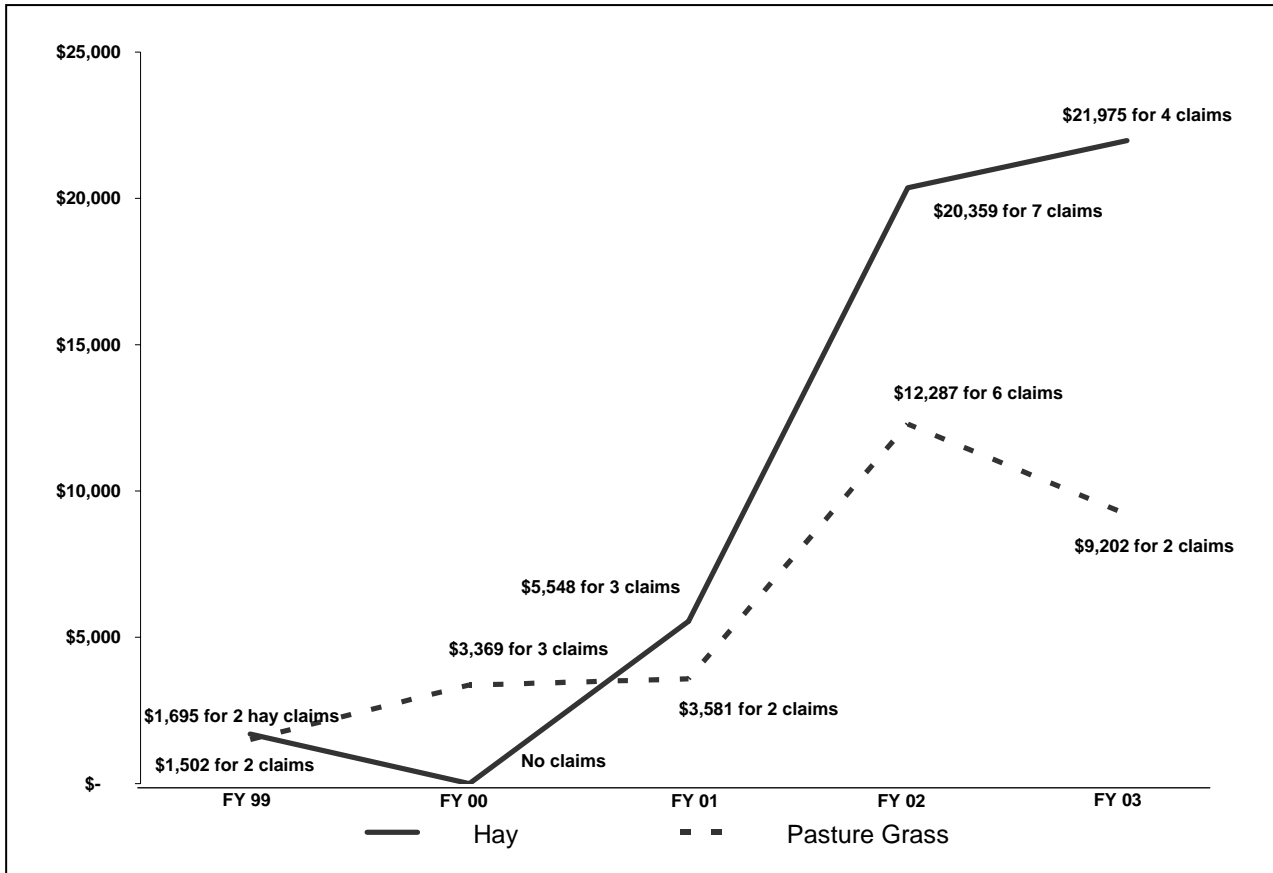
Hay and Cultivated Pasture Grass Damage Claims. To cover the full impact of the expanded compensation program, claims for pasture grass damage must also be considered. According to Department staff, SHB 1752 changed WDFW policy regarding pasture grass claims – prior to the bill the Department did not consistently consider claims for damage to cultivated grass onto which livestock were put for grazing. During FYs 2002 and 2003, the Department received 12 claims totaling \$44,210 for pasture grass damage. As the boundary between hay and pasture grass is not always clear, claims for damage to hay may also need to be considered: Over the same period, the Department received 20 hay claims totaling \$116,134. Prior to the enactment of SHB 1752, some hay and cultivated pasture grass claims were paid. However the number and value of hay and pasture grass claims and payments has increased significantly since the bill when into effect. (See Figure 4.)

Natural Rangeland Damage Assessment Complexity. A few thick claim files attest to the time consumed by both claimants and WDFW staff in trying to determine damage to ranchers due to natural rangeland forage consumed by deer and elk. With a crop sold commercially, damage can often be evaluated by inspection and past harvest records and market price used as a basis for placing a value on it. It is more complex and inexact to assess damage to pasture grass and especially to natural rangeland. Specifically, it is difficult to estimate:

- the number and duration of animals on the land, and extent of land affected;
- the amount of forage suitable for livestock that has been eaten by wildlife; and
- the extent to which forage consumed by deer and elk in the spring reduces forage available in summer when livestock go onto the land.

In addition it is difficult to distinguish between use and actual damage, that is to say, an actual reduction in future revenue that a rancher would otherwise have earned. Some of these issues also apply to a lesser degree in pasture grass claims.

Figure 4 – Hay and Pasture Grass Damage Claim Payments
Fiscal Year 1999 through Fiscal Year 2003



Source: WDFW data; JLARC analysis.

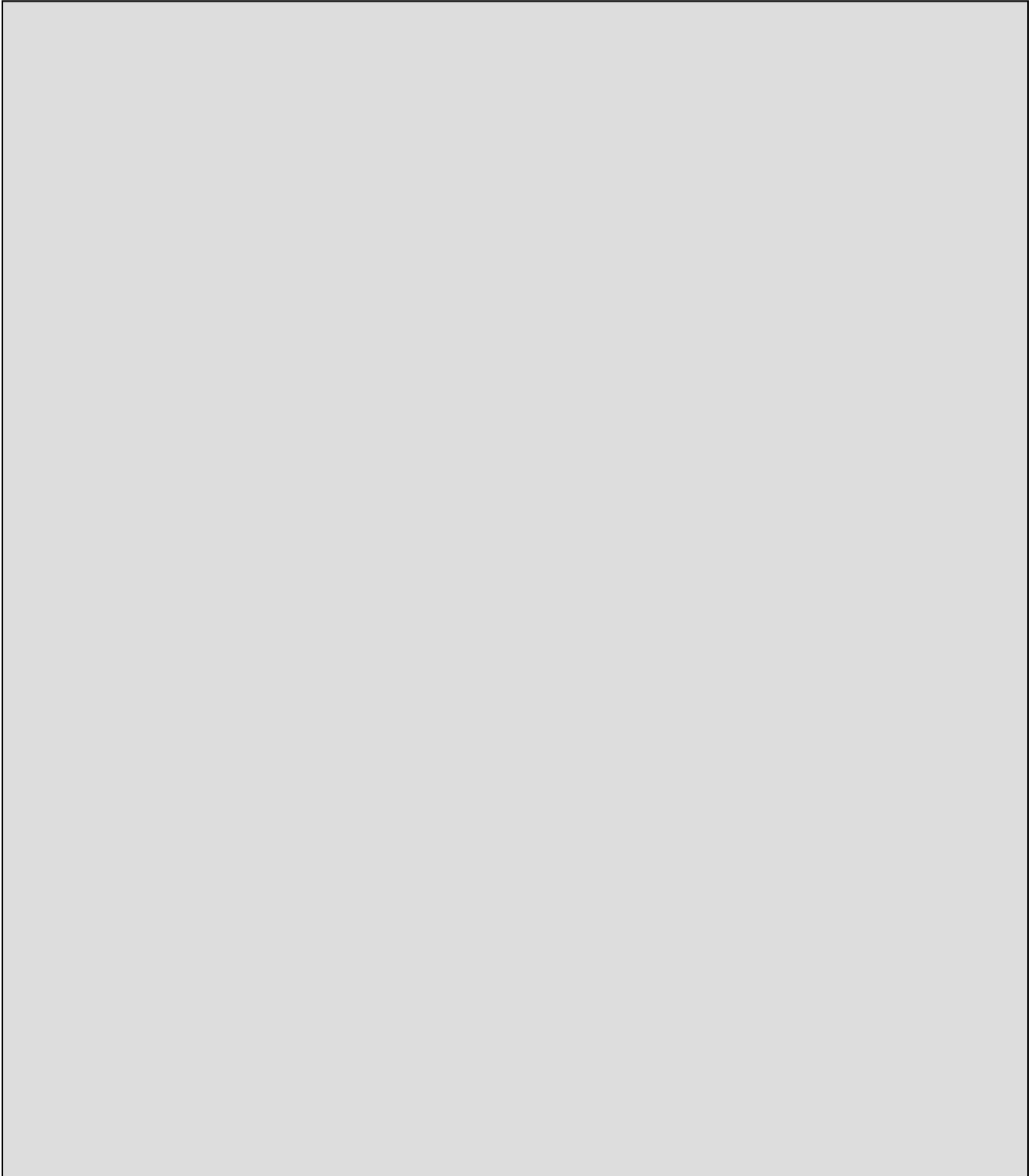
The process and methodology for assessing pasture grass and natural rangeland damage claims is described in detail in Appendix 3.

Grants to Enhance Wildlife Habitat on Public Land. The Department has not, at the end of either of the two fiscal years completed since SHB 1752 went into effect, designated half of the annual unused portion of \$120,000 from Wildlife Fund and \$30,000 from the General Fund for matching grants for habitat enhancement on public land. The Department cites a structural problem in the statutory mandate as the reason they have not complied. By the time the Department knows how much unspent compensation money there will be, at the very end of the fiscal year, appropriation authority for these funds lapses.⁴ The following amounts were unspent at the end of the past two fiscal years:

The total of these numbers is \$106,808. Half of this total, \$53,404, could have been available for matching grants for deer and elk habitat enhancement on public land.

Unspent amounts	FY 02	FY 03
Wildlife fund	\$22,167	\$53,582
General fund	\$18,389	\$12,671

⁴ The General Fund-State appropriation is annual. The Wildlife Fund appropriation is biennial, so the problem applies only at the end of the second year of the fiscal period.



SECTION IV – EVALUATION AGAINST SUNSET REVIEW CRITERIA AND RECOMMENDATIONS

Evaluation

Compliance with Legislative Intent

In enacting SHB 1752, the Legislature’s intent was to give ranchers and dairy farmers an opportunity to be compensated for wildlife damage, putting them on equal footing with other farmers and orchardists. A secondary goal was to decrease future wildlife damage by enhancing wildlife habitat on public land.

Opportunity to Claim for Damage to Livestock Forage. The WDFW’s implementation of the extension of the wildlife damage compensation program to “rangeland forage” appears to have provided the equal treatment for ranchers and dairy farmers that legislators envisioned. Although none of the four natural rangeland claims have been paid, the Department’s reasons for denying the claims appears to be justified by statute. Cultivated pasture grass claims, previously a grey area, are being considered in all regions. Of necessity, the methodology to evaluate claims for damage to cultivated pasture grass and natural rangeland is different from that used to evaluate crops that are harvested and sold, but Washington’s process is similar to those used by the few other states that compensate for rangeland damage. (See Appendix 4.)

Enhance Wildlife Habitat on Public Land. Primarily as a result of a technical problem with the statute, the Department has not, at the end of either of the two fiscal years since SHB 1752 went into effect, designated half of annual unused portions of funds available for damage compensation for matching grants for habitat enhancement on public land. About \$53,400 could have been available during the 2001-2003 biennium.

Efficient and Economical Operation, Controlling Costs

The Department used staff time log records to estimate that 3 percent of Enforcement division staff time is devoted to the broader crop damage compensation program. Staff report that 3 percent of the 2003-2005 biennial enforcement budget for staff, travel, supplies and equipment amounts to \$822,000. WDFW does not estimate staff time devoted specifically to pasture grass and natural rangeland claims, 13 percent of total claims in the last fiscal year. However, WDFW indicates that pasture grass and rangeland claims take significantly longer than average to assess because of the complexity of reaching a reasonable estimate of damage.⁵

Department staff note that the inherent difficulty of arriving at reasonable estimates of not only use of, but also actual damage to, natural rangeland makes the cost in staff time high. However, based on the experience of other states, the Department appears to be reasonably efficient in implementing the program using the animal counts method for assessing damage. Use of enclosures, may be an unduly labor intensive method. (See Appendices 3 and 4 for more about these methods.)

Not Duplicative

The program to compensate landowners for wildlife damage to rangeland does not appear to duplicate any other program. However, the status of claims for damage to cultivated pasture grass and hay is

⁵ In addition to using staff, WDFW contracted with an outside expert to analyze one natural rangeland claim. The cost of this consultant was \$1000, shared equally by the Department and the claimant.

unclear. Does the Department consider them to be “crops” covered by the broader wildlife compensation program or are they part of “rangeland forage?”

Performance Measures

Due to the short time between when the legislation went into effect on July 1, 2001 and the expiration date of June 30, 2004, no performance measures have been developed for the extension of the wildlife damage claims program to rangeland.

Impact of Termination

If the Legislature does not take action to extend it, the rangeland damage claims statute will expire on June 30, 2004.

- The WDFW would no longer consider claims for damage to natural rangeland used for livestock grazing.
- Neither statute nor rule would specify how the WDFW should regard claims for damage to hayfields or cultivated pasture grass used for livestock grazing.
- The mandate to use half of all unspent compensation funds each fiscal year for matching grants to enhance wildlife habitat on public land would disappear.

RECOMMENDATIONS

Recommendation 1

The Legislature should let the natural rangeland damage compensation program expire on June 30, 2004.

Legislation Required:

Fiscal Impact:

Reporting Date:

Rationale/Explanation: From the limited data available at the time of this review, just two and a half years after the effective date of the legislation, there appears to be no compelling reason to continue this program. The program to compensate for natural rangeland damage has had minimal use, four [get updated number] claims. Assessing damage to natural rangeland appears to be difficult, inexact and costly in staff time. Assistance with abatement efforts, fencing, special hunts, emergency kill authority, and enhancement of wildlife habitat on adjacent public land are more cost effective methods of minimizing the impact of deer and elk on privately-owned natural rangeland.

Recommendation 2

The Legislature should direct the Department to convene a task force to draft proposed regulations to apply the general crop damage compensation program to hayfields and cultivated pasture grass.

Legislation Required:

Fiscal Impact:

Reporting Date:

Rationale/Explanation: More claims deal with this sort of damage, and it is more feasible to address. Negotiated rules (Washington Administrative Code) rather than statute may best provide for the flexibility and expertise needed to ensure that this policy both can be implemented efficiently by the Department and meets the needs of agriculture.

The rule-writing task force should include representatives of livestock agriculture and grass experts as well as department staff. These rules should be formally adopted as WAC.

Recommendation 3

If the Legislature wishes to continue to direct a portion of unspent crop damage compensation funds to matching grants for habitat enhancement on public land after June 30, 2004, the Legislature must create a workable funding mechanism in statute.

Legislation Required:

Fiscal Impact:

Reporting Date:

Rationale/Explanation: On the final day of each fiscal year, half of the unspent funds allocated for compensation would need to transfer from the wildlife fund and the general fund to a new or existing non-appropriated fund in the Department. Use of this money would need to be restricted to matching grants for habitat enhancement on public land. Because the amount of money available each year will vary and generally be small, it would be most efficient to have this money contribute to an existing habitat enhancement grant program, rather than create a new one.

Agency Responses

Agency responses will be included in the final report.

Acknowledgements

We appreciate the assistance provided by staff of the Department of Fish and Wildlife in conducting this review.

APPENDIX 1 – SHB 1752

APPENDIX 2 – AGENCY RESPONSES

Agency responses will be included in the final report.



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

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January 5, 2004

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JLARC

TO: Thomas M. Sykes, Legislative Auditor
Joint Legislative Audit and Review Committee

FROM: Jeff P. Koenings, Ph.D.
Director
Washington Department of Fish and Wildlife

Will Roehl, Chair
Fish and Wildlife Commission

RE: Wildlife Damage Claims on Rangeland Sunset Review

The Washington Department of Fish and Wildlife (WDFW) concurs with all three JLARC recommendations. Should the Joint Legislative Audit and Review Committee accept all three recommendations, WDFW would appreciate and offers its assistance in the amending of RCW 77.36.

Recommendation	Agency Position	Comments
#1	"Concur"	
#2	"Concur"	
#3	"Concur"	

Thank you for the opportunity to review and comment on this report. If you have any further questions, please feel free to contact me at (360) 902-2225.

cc: Jim Skalski, Budget Assistant, OFM
Bob Nichols, OFM Policy Office
Bruce Bjork, Assistant Director, Enforcement
Steve Pozzanghera, Deputy Assistant Director, Wildlife
John Broome, Captain, Enforcement
Sean Carrell, Nuisance Wildlife Coordinator, Enforcement

APPENDIX 3 – DAMAGE CLAIM PROCESS AND METHODOLOGY

GENERAL DAMAGE CLAIM EVALUATION PROCESS

Within WDFW, the wildlife damage claims program is administered by the Enforcement Program, a unit whose primary work is enforcing the state's hunting and fishing regulations. An individual seeking to file a claim must request the claim form in writing from WDFW headquarters. The staff member processing damage claims notes that he/she aims to talk by telephone with potential claimants to make sure they understand the limitations of the program, and do not spend time preparing claims that are clearly outside of what can be compensated. About 80 percent of those who requested forms over the last five years have actually completed and submitted them to the Department.

The claim form requires that the claimant estimate the number of animals causing damage, type of crop and acreage damaged and the evaluation techniques and methods used to arrive at the claimed monetary loss. The form also asks questions regarding insurance, public hunting, other factors that might have contributed to damage, and any prevention techniques employed. The form must be notarized and returned to WDFW headquarters. Regional enforcement officers investigate the claim and recommend a method for calculating the loss, as well as a plan to reduce or eliminate future loss if the problem is ongoing. WDFW regulation 7.30.50 (C) says in part:

“(t)he Officer’s investigation should include, but is not limited to the following: landowner’s business licenses and IRS Form 1040, Schedule Fs, property legal descriptions, maps and photographs of the area covered by the claim, and historical information such as buyer’s invoices and packing slips (valuable to determine a price and yield for the crop). Officers should contact local crop brokers to determine the expected yields and prices for the crops in the area.”

Field staff make a recommendation regarding the merit of the claim and the value of the damages (sometimes less than the amount claimed), which is forwarded to headquarters for the final decision on paying claims for up to \$10,000. Claims for over \$10,000, and appeals of Department decisions, must be filed with Office of Risk Management (ORM). The ORM does not conduct an independent investigation, but rather simply forwards the claim and the WDFW recommendation to the Legislature, where they are decided upon through the appropriations process as sundry claims.

VARIATION FOR NATURAL RANGELAND DAMAGE CLAIMS

While the process for assessing damage to a crop that is sold commercially is relatively straightforward, it is more complex and inexact for pasture grass or natural rangeland used for grazing livestock. It is more difficult to estimate all of the following factors:

- The number and duration of animals on the land, and the area affected,
- The amount of forage suitable for livestock that has been eaten by wildlife, and

- The extent to which forage consumed by deer and elk in the spring reduces forage available in summer when livestock go onto the land.

It is also difficult to distinguish between use and actual damage, that is to say, an actual reduction in future revenue that a rancher would otherwise have earned. Some of these issues also apply to a lesser degree to pasture grass claims.

The Department has used, or prepared to use, two methods to estimate “rangeland forage” damage:

Animal Counts. The claimant is asked to estimate the number of deer or elk making use of the area. Counts made at night are considered most reliable. A standard formula for estimating the amount one animal eats in a day is used to arrive at a measure of the amount of forage consumed. A difficulty with this system is that elk counts must be made with some frequency during the damage period in order to be considered reliable, as elk herds often move from place to place. Deer may be less mobile, but the accuracy of counts remains a contentious issue. A further complication is that not all of the forage that deer or elk eat are also consumed by cattle, so an overlap factor must be estimated.

Enclosures. A second method of assessing damage to pasture grass or natural rangeland is to enclose plots of land on each field, preventing wildlife from consuming grass within them. At the end of the damage period, the grass within the enclosure and in a similar area outside it is clipped and dried. To be accurate, the clipping must be done with great care. The weight of grass within the enclosure is then compared to the weight of grass in the outside plot. The difference between the two represents the amount consumed by wildlife.

This method is extremely labor intensive, and must be done very carefully in order to yield valid data. The enclosures must be put up before any damage occurs and removed before livestock go onto the field. Rangeland management experts estimate that ten enclosures must be used on each field that is uniform. If there is variation – for example, some rocky areas and some areas that get more moisture than others – even more enclosures must be used if the estimates are to be reliable. The clipped grass from each inside and outside plot must be dried and then weighed.

WDFW staff indicate the Department has constructed a number of enclosures and notified ranchers with whom they have contact that they are available. Enclosures have been used in an area in the Upper Wenas Valley in Yakima County leased by a natural rangeland damage claimant, as a part of a Natural Resources Conservation Service study. However, WDFW staff say they are not aware of any additional use by landowners concerned about wildlife damage.

The Difficulty of Distinguishing Between Use and Damage. The above methods simply measure use of pasture grass and natural rangeland by deer and elk. To get to actual damage, further assessment is needed. First, the amount of forage consumed by wildlife is converted to lost livestock grazing potential, using a formula that compares food consumption among species. For example, a deer eats about 15 percent of what a grazing cow does. On natural rangeland, a further factor must be applied to account for the fact that not all the natural species consumed by deer and elk are also eaten by livestock. The use by wildlife can then be described as reduced Animal Unit Months (AUMs), or of available livestock forage consistent with good grazing practices. The value of lost AUMs is determined by grazing contract prices in the area.

In assessing one of the two claims from the Whitman County landowner, WDFW has taken the position that damage occurs only when the wildlife use reduces AUMs enough that the landowner must reduce the number of cattle he or she grazes. An independent consultant hired jointly by the Department and the landowner calculated the lost AUMs. However, because there was still surplus

forage available on the land after use by both deer and cattle, the Department found no competition and no damage had occurred.

The Impact of Timing. The timing of use by wildlife of cultivated pasture and natural rangeland, as well as other crops, may have an impact on whether damage occurs. Many cultivated and natural grasses in Washington are annual plants that grow during only 60-70 days in the spring. If a significant amount of the grass is eaten during that period, before it makes a seedhead or forms a joint in the seed carrying stem [check this, confirm] it will cause long-term damage to the land. For this reason, it is considered good grazing practice not to put cattle on rangeland until the growth period is past. In the Whitman County claim described above, WDFW took the position that deer competed with cattle only during the four month period when both were grazing a pasture, whereas the consultant felt that use of the pasture by deer throughout the year should be considered.

APPENDIX 4 – EXPERIENCES OF FOUR OTHER STATES THAT COMPENSATE FOR DAMAGE TO STANDING HAY AND PASTURE GRASS

Wyoming

Wyoming provides compensation for damage to “growing cultivated crops,” defined in rule to cover crops grown on privately-owned or leased land and harvested or utilized annually for commercial sale or to feed livestock, including “native hay meadows that are managed for hay or livestock forage” but excluding “rangelands managed for livestock forage.” However, Wyoming does pay for “extraordinary damage to grass” on rangeland. Extraordinary damage is defined as “the loss or harm as proven by the landowner, lessee, or agent that significantly exceeds the usual, customary or average use of noncultivated grass plants...” Extraordinary grass damage means “consumption or use of non-cultivated grass plants in excess of the consumption or use which normally occurred during the two years immediately preceding the time period covered by the damage claim.” Game department staff note that such extraordinary damage is likely to be caused by seasonal migrations and weather conditions that cause more than the usual number of animals, generally elk, to congregate in one place. Game wardens know the usual distribution of big game. The policy is to use animal counts, or enclosures in “areas of extensive damage and when additional manpower and time are available” to determine damage. The state struggles to distinguish between use and actual damage.

Notice of intent to make a wildlife damage claim must be received within 15 days after damage and the completed claim form submitted within 60 days. In FY 2003, 4 percent of all damage claims were denied, 65 percent were paid in full, and 31 paid in part. Twelve percent of claims were appealed to the Commission and 1 percent to an arbitration panel.

Colorado

Colorado pays for damage to “meadows, pastures and artificially seeded rangeland” if the use is above historic levels. Hay meadows and pastures are irrigated or are classified by the Natural Resource Conservation Service as wet meadow, salt meadow, sandy meadow or mountain meadow range sites. The artificially seeded rangeland must have at least 50 percent of plants from the artificial seeding and be used primarily for livestock forage. The land is must be fenced well enough to keep out livestock in adjacent fields.

The state also pays for damage to rangeland deferred for seasonal use, that is, to rangeland from which livestock have been excluded for a season so that forage can grow and be available for their consumption in a future season. Again, use must be greater than historic levels, and the land must be fenced well enough to keep out livestock. A notice of intent to defer must be on file with the Department prior to the deferral period.

“Historical levels” is defined as the average number of big game using the property between 1953 and 1972. Damage is determined by the reduction in available AUMs relative to the livestock being grazed in the field or range. Use is established by counts of wildlife. Notice of intent to claim must be submitted within 10 days of damage discovery and the form within 90 days. An arbitration process is available for disputed claims.

Utah

Utah pays for damage to cultivated crops. “Cultivated crop” is defined to include both (a) crops from or on cleared and planted land; and (b) crop residues that have forage value for livestock. So hay fields that are cut and then grazed are included, but natural rangeland is not. Claimants receive the first \$1000 of their claim upfront. The remainder waits until the end of the season and then is prorated based on legislative appropriation relative to total claims

Idaho

Idaho considers damage to forage, including forage on natural rangeland. Use is established by animal counts, and occasionally cages. Forage damage claims are not frequent, typically totaling less than \$10,000 per year of the \$130,000 average paid for all crop damage. Idaho does not compensate for the first \$1000 of damage, and most rangeland damage is less than this deductible. Use by wildlife is assumed to constitute damage. Like Utah, Idaho may pro-rate claims if the amount due exceeds the appropriated funds. Funds in the account used to pay claims that are unspent and unencumbered at the end of the fiscal year revert to a general fish and wildlife account.

